

MISSOURI CLEAN WATER COMMISSION MEETING

September 29, 2004

Doubletree Downtown Kansas City

1301 Wyandotte

Kansas City, MO

MINUTES

Present

Thomas A. Herrmann, Chairman, Missouri Clean Water Commission
William A. Easley, Commissioner, Missouri Clean Water Commission
Paul E. Hauser, Commissioner, Missouri Clean Water Commission
Cosette D. Kelly, Commissioner, Missouri Clean Water Commission
Kristin M. Perry, Commissioner, Missouri Clean Water Commission

Cecilia Abbott, City of Kansas City, Kansas City, Missouri
Pearl E. Ashworth-Hankins, Duncan's Point Homeowners, Assoc., Kansas City, Missouri
Dorris Bender, Independence Water Pollution Control, Independence, Missouri
Michael Bollinger, Ameren, St. Louis, Missouri
Robert Brundage, Newman, Comley & Ruth, P.C., Jefferson City, Missouri
Eliehue Brunson, Duncan's Point, Prairie Village, Kansas
Nancy Brunson, Duncan's Point, Prairie Village, Kansas
Bill Bryan, Attorney General's Office, Jefferson City, Missouri
Fred Cason, Duncan's Point Homeowners Assoc., Kansas City, Missouri
Dick Champion, Urban Area Coalition, Independence, Missouri
Andy Clements, City of St. Joseph, St. Joseph, Missouri
Sandi Cornwell, Duncan's Point, Kansas City, Missouri
Josh Cunningham, Duncan's Point, Kansas City, Missouri
Chad Davis, Trenton Municipal Utilities, Trenton, Missouri
Helen Davis, Duncan's Point, Kansas City, Missouri
Pete Davis, EPA Region 7, Kansas City, Kansas
John DeLashmit, EPA Region 7, Kansas City, Kansas
Cindy DiStefano, MO Department of Conservation, Columbia, Missouri
Mark Epstein, Pebble Creek Homes Assoc., Inc., Kansas City, Missouri
John Ford, Department of Natural Resources, Jefferson City, Missouri
Bryan Fawks, Department of Natural Resources, Jefferson City, Missouri
Harry Gallagher, 3M Company, Jefferson City, Missouri
Peter Goode, Department of Natural Resources, Jefferson City, Missouri
James Helgason, Department of Natural Resources, Independence, Missouri
Bob Hentges, MO Public Utility Alliance, Jefferson City, Missouri
Lynette Hicks, City of University City, University City, Missouri
Jerry Hoffman, Burns & McDonnell, Kansas City, Missouri
Leslie Holloway, MO Farm Bureau, Jefferson City, Missouri
Hans Holmberg, Limno-Tech, Inc., Houlton, Wisconsin
Jim Hull, Department of Natural Resources, Jefferson City, Missouri
Inez Kaiser, Duncan's Point, Overland Park, Kansas

Marlene Kirchner, Department of Natural Resources, Jefferson City, Missouri
Mary Lappin, Water Services, Kansas City, Missouri
Richard Laux, Department of Natural Resources, Jefferson City, Missouri
John Lodderhose, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Jim Macy, Department of Natural Resources, Kansas City, Missouri
Jim Mellem, Water Services, Kansas City, Missouri
Eric Morris, Greene County SWCD, Springfield, Missouri
Stan Murray, Cape Girardeau County, Jackson, Missouri
Susan Myers, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Kevin Perry, REGFORM, Jefferson City, Missouri
Franklyn Pogge, Water Services, Kansas City, Missouri
John Reece, Little Blue Valley Sewer District, Independence, Missouri
Charles Reineke, Platte County Regional Sewer District, Tracy, Missouri
Will Rhodes, Greene County SWCD, Springfield, Missouri
Wayne Ryland, International Paper, Joplin, Missouri
Mark Salley, Central Regional Env. Office, Kansas City, Missouri
Steve Scanlon, Army Regional Env. Office, Kansas City, Missouri
Phil Schroeder, Department of Natural Resources, Jefferson City, Missouri
Becky Shannon, Department of Natural Resources, Jefferson City, Missouri
Larry Shepard, US EPA, Kansas City, Kansas
Evelyn Shields-Benford, City of University City, University City, Missouri
Eddie Shivers, Duncan's Point, Kansas City, Missouri
Tom Siedhoff, Mississippi Lime Company, Ste. Genevieve, Missouri
Cynthia Smith, Department of Natural Resources, Jefferson City, Missouri
Marie Steinwachs, UMC-Office of Waste Management, Nixa, Missouri
Jeff Theerman, Metropolitan St. Louis Sewer District, St. Louis, Missouri
Scott Totten, Department of Natural Resources, Jefferson City, Missouri
Roger Walker, International Paper, St. Louis, Missouri
Mary West, City of Moberly, Moberly, Missouri
Clyde Wilber, Greeley and Hansen, Marlboro, Maryland
Tracey Winter, Department of Natural Resources, Kansas City, Missouri
J. Bruce Woody, City of St. Joseph, St. Joseph, Missouri
Corrine Young, Duncan's Point, Kansas City, Missouri
Audraft Young, Duncan's Point, Kansas City, Missouri

Administrative Matters

Call to Order/Introductions

Chairman Herrmann called the meeting to order at approximately 9:16 a.m. and introduced Commissioners Easley, Kelly, Hauser, and Perry. Commissioner Minton was absent. Chairman Herrmann then introduced Director of Staff Jim Hull, Assistant Attorney General Bill Bryan, and Secretary Marlene Kirchner.

Approval of August 4, 2004 Clean Water Commission Meeting Minutes

Chairman Herrmann asked if there were any additions or corrections to the minutes. Hearing none, Chairman Herrmann entertained a motion to accept the minutes and enter them into record.

Commissioner Perry moved to accept the August 4, 2004 Clean Water Commission minutes. Commissioner Hauser seconded the motion. Commissioners Easley, Kelly, and Chairman Herrmann voted yes.

Discussion and Vote to Approve UAA Protocol

Mr. Phil Schroeder, Chief of the Water Quality Monitoring and Assessment Section, Department of Natural Resources, reviewed with the Commission another draft of the UAA Protocol.

On page 3 of the document under Purpose, “Assist in identifying waters of the state which do not support water contact recreational uses” should be left in as a fifth bullet.

Page 9 of the document contains definitions of water uses. Mr. Schroeder referenced the footnote at the bottom of the page. “These use definitions may be modified in future WQS revisions.” He explained that is there as a result of discussion by the Commission that a couple of these definitions need to be changed. Those definitions appear in item 7 on page 8 of the document - - Human health protection (fish consumption and secondary contact recreation). The Commission has expressed a desire that the words “secondary contact recreation” come out of that definition. The footnote that relates to item 12 on page 9, “Storm and flood-water storage and attenuation” there was some concern expressed that it might relate to some private ponds rather than commercial type flood control structures.

The department wanted to make sure the Commission understood that they are fully aware of the desires for some changes there. The department’s recommendation at the September 13 teleconference was to try to address those changes during the water quality standards revisions process as opposed to trying to draft language at the meeting today.

Chairman Herrmann addressed item 7 in addition to the first line “...and secondary contact recreation...” the Commission had decided to eliminate the last sentence “Secondary contact recreation assumes limited physical contact with the water without likelihood of water ingestion.”

Mr. Schroeder reported on page 12 of the document “...conducted during the recreational season (April 1st to October 31st) unless shown that sufficient evidence can be provided outside this season.” The department suggests “shown that” be removed.

On page 12, the second paragraph, third line “...the water has a depth of at least one-half (0.5) meter (1.64 feet)...” The words “during base flow conditions” was added by the Commission and that was inadvertently left out. It will be added back in.

On page 23 of the document, the third diamond down should read “Is it a base flow condition?”

Mr. Schroeder commented that the Commission had asked for a place in the document to explain how bacteria sampling and analysis be conducted when trying to show that certain criteria for use removal is appropriate. It was suggested to add it in one of the forms within the protocol. The department intends to move in that direction and provide the Commission a recommendation on how bacteria sampling should be done.

Chairman Herrmann had some additional changes to the document on page 5, the last paragraph referencing the Clean Water Act. It should say “federal regulations” rather than “CWA.” Page 7, 10 CSR 20-7.031(1) (F) Classified Waters, “normal flow” should be changed to “base flow.” Page 19, near the bottom of the page it reads “This information is not to be used solely for removal of whole body contact recreation...” The sentence should refer simply to “recreational” uses, not to “whole body contact” recreational uses.

Ms. Leslie Holloway of the Missouri Farm Bureau addressed the Commission regarding page 10; Existing Uses versus Designated Uses. The federal regulations denote that an existing use can be changed if a use requirement or more stringent criteria is added. With the revision as it is now (deletion of “...unless the use is demonstrated to be no longer attainable under the criteria explained on pages 11 through 14 of this document.”) it would limit the designations of an existing use. She suggests that the language be changed to read “...must remain designated for that use unless a use requiring more stringent criteria is added.”

Mr. Bob Hentges, Missouri Public Utility Alliance, addressed the Commission regarding his concern of who determines the whole length of the segment to be studied and how that is going to impact the standards. It is not addressed in the document.

It will require breaking down total lengths of some of the streams. Many streams have three to four different classifications in the length of the stream.

Mr. John Ford, Water Quality Monitoring and Assessment Section, Department of Natural Resources, reported the department’s future plans are to change the listing of the streams and lakes in the water body standards to be in conformance with the National Hydrologic Data Set. That will result in much shorter segments.

Chairman Herrmann entertained a motion to accept the UAA Protocol with the revisions explained.

Commissioner Perry made a motion to accept the proposal of staff to approve the UAA Protocol with the revisions, along with Ms. Holloway’s recommendation, contingent upon the department continuing to study how to do the bacteria

monitoring and following up on the length of the segments. Commissioner Hauser seconded the motion. All the Commissioners and Chairman Herrmann voted yes.

Discussion and Vote to Approve Detailed 303(d) Listing Methodology Document

Mr. John Ford addressed the Commission to request approval of the draft Methodology for the Development of the 2004 Section 303(d) List in Missouri. The document describes the methods to be used in selecting and analyzing water quality data for the purpose of creating the next Missouri 303(d) list of impaired waters.

Ms. Leslie Holloway addressed the Commission about the assessment of nutrient levels in waterbodies that are evaluated, and assessment of drinking water supply based on raw water samples and the maximum containment level (MCL) for Atrazine in those samples. On page 15 of the document, the first category of Drinking Water Supply (raw water) does not make reference to any MCL but the standard has been applied in assessing those drinking water reservoirs that have Atrazine content. Ms. Holloway suggests that the application of the drinking water standard for Atrazine and MCL treated water should not be applied to the raw water samples. In the same category there was a reference to taste and odor. There have been water bodies listed on the basis of taste and odor contributed to algae, which was caused by nutrient content.

Mr. Phil Schroeder stated the department is in the process of developing nutrient criteria. They are not likely to have finished criteria by the time the next 303(d) listing cycle comes around. To resolve Ms. Holloway's concerns, it will have to be done outside of the context of the finalized nutrient criteria development.

Commissioner Perry expressed concern about waiting for another 3 year 303(d) listing cycle. Commissioner Perry asked if any TMDLs have been done for nutrients?

Mr. Ford replied the James River and Elk River system have completed TMDLs.

Chairman Herrmann entertained a motion to accept staff recommendation on the 303(d) Listing Methodology Document.

Commissioner Kelly made a motion to accept the 303(d) Listing Methodology Document. Commissioner Hauser seconded the motion. Commissioner Easley and Chairman Herrmann voted yes. Commissioner Perry abstained.

City of Parkville Variance Update

Mr. Richard Laux, of the Permitting and Engineering Section, Department of Natural Resources, reported the City of Parkville withdrew their request for a variance proposing to modify their current permit and the department will do a public notice later. The department will work with the city to see if this can become a permit action rather than a variance request.

Eagle Woods Variance Update

Mr. Laux reported that at the August 4, 2004 Clean Water Commission meeting that the Eagle Woods Homeowners Association requested a continuance on their variance application. The applicant is still in the same position. The sale has not been finalized yet. The variance request is still on hold.

Hubble Creek – Cape Girardeau County Variance

Mr. Richard Laux reported the department received an application on August 13, 2004 for a variance from 10 CSR 20-4.061(10), State Storm Water Grant and Loan Program. Staff has considered the request and recommends that the Commission grant preliminary approval of the variance and for staff to public notice the intention of the Commission to grant approval of the variance.

Chairman Herrmann entertained a motion to accept staff's recommendation to grant preliminary approval of the variance.

Commissioner Hauser made a motion to accept staff's recommendation on the Hubble Creek Cape Girardeau County Variance. Commissioner Kelly seconded the motion. The motion passed unanimously with all Commissioners voting.

Badger Wolf Farm

Mr. Robert Brundage, Newman, Comley and Ruth, P.C., reported he represents Premium Standard Farms in this appeal. Premium Standard Farms dismissed its appeal.

The Hearing Officer, Mr. Richard Davis, prepared an order of dismissal without prejudice.

Chairman Herrmann entertained a motion to enter into the order of dismissal.

Commissioner Perry made a motion to enter into the order of dismissal. Commissioner Hauser seconded the motion. The motion passed unanimously with all Commissioners voting.

Discussion and Vote on the Ranking of the FY 04 Proposals for 319 Grant Funding

Mr. Greg Anderson, Watershed Protection, Department of Natural Resources reported the Request for Proposals (RFP) for Fiscal Year 2004 319 Nonpoint Source Control Grants was distributed in February 2004. Staff reviewed optional pre-proposals and provided feedback to applicants. A training session was held in May 2004. Complete grant applications were due July 1, 2004. There was a preliminary committee review on July 12, 2004. Applicants were interviewed and the rankings took place on August 17 – 18, 2004.

Following Commission approval of the project ranking, staff will finalize the federal grant application and submit it to EPA. Staff will begin negotiations with sponsors of the selected projects to develop appropriate subgrant awards, ensuring that federal and state

grant requirements are met and that funding is used appropriately. After EPA awards the 319 grant to the department, the department will award funds to the project sponsors through subgrant agreements.

Following the submittal to EPA, staff will begin work immediately on the FY05 RFP.

Staff recommended the Commission approve the project ranking as recommended by the interagency review team and department. Both base and incremental funding will be used to fund as many projects as possible in the order of the ranking. If significant incremental funds remain after funding the eligible projects, staff will target a new request and propose any remaining money to be directed to a specific watershed.

Commissioner Easley asked for a list of the projects and the dollar amounts from the FY03 funding. He requests that the administrative costs be broken down. He would like detail of the entire package. Also, for those projects that haven't been awarded, he would like a list of projects pending.

Ms. Becky Shannon, Watershed Protection, Department of Natural Resources stated staff will provide that information. Staff are presently working on an update on funds that had been set aside separately per Commissioner Perry's request.

Chairman Herrmann stated that the Commission has discussed before about having a progress report so that they can see what is being done with the money that is allocated for the projects. He would like to know the goal of each project and what percentage of that goal has been met.

Ms. Shannon asked if staff could provide the quarterly reports that the projects send in?

Chairman Herrmann replied yes.

Ms. Marie Steinwachs, University of Missouri Extension, commented that they submitted a proposal called Mercury Free Community Pilot Program. The proposal is not a traditional watershed restoration project and ranked low on the proposal ranking list.

Mercury is in the public's mind concerning interest of the agency's who are participating in the Mercury Taskforce. Testing for mercury has been limited.

The proposal references dental offices, which EPA addressed may contribute 35% of mercury in wastewater. Other significant sources it addresses is salvage yards, school laboratories, small medical facilities, and households of the general population. The project would start in January 2006.

Ms. Steinwachs encourages the Commission to recommend that this project not be dropped.

Chairman Herrmann entertained a motion relative to the 319 staff recommendations.

Commissioner Easley made a motion to accept staff's recommendation on the ranking. Commissioner Kelly seconded the motion. The motion passed unanimously with all Commissioners voting.

Clean Water Commission Operating Procedures

Mr. Bill Bryan, Attorney General's Office, had some language regarding the Sunshine Law, which will need to be added to the operating procedures.

A motion was made by Commissioner Perry to table the issue until the November meeting. Commissioner Hauser seconded the motion. The motion passed unanimously with all Commissioners voting.

Combined Sewer Overflow (CSO) Presentations

Mr. Dick Champion, of the Urban Areas Coalition, reported that present are Mr. Hans Holmberg of Limno-Tech, Inc., Ms. Mary West with the City of Moberly, and Mr. Bruce Woody with the City of St. Joseph to do a series of presentations on CSO's.

Mr. Champion stated that they believe the State of Missouri should embrace and adopt the national CSO policy and would like the state to get rid of the 45/45 effluent standard. They believe in site specific flexibility. Thousands of hours have gone into a collaborative effort nationally on CSO policy by people all over the United States.

Mr. Hans Holmberg reported on the permitting and compliance of CSO's. The Clean Water Act and EPA have given state agencies and CSO communities the task of permitting CSO's and achieving compliance with water quality standards. The Clean Water Act did not lay out a clear path for permitting CSO's. The Clean Water Act requires that all point sources, including CSO's, be permitted and that technology based effluent limits and water quality based effluent be developed for all point sources. For wastewater treatment facilities, the Clean Water Act is quiet clear. The technology based requirement is secondary treatment, meeting limits of 45 milligrams per liter of solids and biochemical oxygen demand (BOD). The water quality based limits are often based on achieving compliance during conservation drought flow conditions so that there is some assurance that under all conditions in that receiving water, water quality standards will be met.

CSO's present many more challenges. CSO's have multiple outfall locations scattered throughout a community. The flows in those CSO's are intermittent and when they do occur there are highly varying flow rates and are non-predictable in nature. Those characteristics of CSO's make controlling them and monitoring compliance very challenging and costly. Various efforts by EPA have provided guidance to state agencies and CSO communities for permitting CSO's. In 2000 congress passed the Wet Weather Water Quality Act. Significant time and resources have been invested in the development of the national policy and implementation of it. Various efforts by EPA

have resulted in the modern map for permitting CSO's. The national CSO policy. It reaffirms the principles in the CSO strategy saying that control should be site specific, flexible and cost effective. It defines what the minimum technology based requirements are specific to CSO's and it calls these the nine minimum controls. There are nine steps all CSO communities must implement to reduce CSO's and the impact of CSO's. It also requires the development of a long term control plan that ultimately must result in a set of controls that will meet water quality standards. A key component of the national policy is the review and revision of water quality standards. National policy also lays out a base permitting approach. Seven CSO communities in the state remain. The larger ones being St. Louis, Kansas City and St. Joseph, and the four smaller ones are Macon, Moberly, Sedalia, and Cape Girardeau. In 1989 the state issued a state CSO strategy. The state did not issue a policy in 1994 in response to the EPA policy. Separation may be an appropriate control technology for some communities or within specific areas of larger communities and should receive full consideration if developing a long term control plan. CSO communities recommend that a new approach in Missouri be taken for permitting CSO's and achieving compliance with water quality standards. Provide the communities a site specific flexibility, consider the nature of their collection system in receiving waters, understand that there is no one size fits all solution to this problem, evaluate a full range of control alternatives not just secondary treatment and separation, assess the cost effectiveness of those controls, look at how much its going to cost for a range of control alternatives, understand what the water quality benefits will be with each of those controls alternatives, make informed decisions on what the best balance is, and finally reconsider what appropriate water quality standards should be and how they apply during wet weather for these CSO discharges. CSO communities recommend that the state adopt the national approach and file the guidance provided there.

Ms. Mary West reported the City of Moberly currently has four CSO outfalls in their system, five outfalls total including one at the wastewater plant. There are approximately 665 acres of combined sewer watersheds. All CSO's are listed in their current NPDES permit. Three of the four outfalls currently have the 45/45 limits for BOD and suspended solids. They sample all outfalls for every rain event as required by their permit. In 2003, 35% of the overflows achieved 45/45 or under limit. So far in 2004, 95% of the overflows have met the 45/45 limit. During heavy rain, whenever they violate the 45/45 limit, they receive letters of warning from the Department of Natural Resources because they are not meeting those limits as required in their permit. In the past they have also paid fines because of the exceedances of their permit. Two CSO outfalls currently have stormwater holding lagoons; they are the sites of two former wastewater plants. They have one additional CSO outfall that is just a diversion structure. All CSO outfalls and lift stations are checked daily. There are twelve lift stations currently in operation.

Their permit expired in May 2002. They have been talking with the department about the re-issuance of that and how they are going to treat the 45/45 limits for their CSO's. EPA has conducted three CSO compliance inspections since 1999 and has not sited them for any problems in any of those reviews. They estimate that 82% of all stormwater in the combined sewer area is collected, transported and treated for secondary treatment at the

wastewater treatment facility. Additionally 16% of the stormwater from the combined sewer areas does receive primary treatment. That is a total of 98% of the stormwater in the combined sewer system receives at least primary treatment. The Missouri policies effect on the state is that they cannot consistently meet 45/45 limits without adding additional treatment at the outfalls. That is a very expensive solution for something that may be needed 5% of the time. Under federal policy Moberly would meet the federal presumptive approach to control and combine sewer overflows. The city would rather spend the money out in the system instead of treating stormwater at the CSO's. The 45/45 limits eliminate any flexibility and cause the city to be in noncompliance with their permit resulting in enforcement action against them. 45/45 limits should not apply to combined sewer overflows. Ms. West feels the 9 minimum controls and long term control plan should be required in their permit as required by U.S. EPA rather than in a settlement agreement. Under DNR policy this is not currently an option.

Mr. Bruce Woody stated the City St. Joseph has two watersheds. The Missouri River on the west side of town and the 102 River on the east side of town. Over 2/3 of the area drains to the Missouri River. There are eight watersheds that drain that direction and to those eight watersheds there are 15 CSO's that drain directly to the Missouri River. The separate system drains to the 102 River and comes back where it will eventually enter the combined sewer system. Approximately 2/3 of St. Joseph's 49 square miles is in the combined sewer area. The city picked up all the combined sewer that discharged in the Missouri River by constructing an interceptor sewer that runs along the east bank of the Missouri River. That interceptor picks up the flow and takes it to the wastewater treatment plant. The CSO discharges directly to the Missouri River with no intravenous drain. They are constructing a 100 year detention basin in the Black Snake Watershed. They have in a pipeline, built for U.S. Army Corps of Engineers, to do a project on the Whitehead Watershed, the largest watershed outside of the city limits. They are working with Black and Veatch Consulting Engineers in Kansas City to address some issues.

Federal CSO policy relies on flexibility to choose which might be the most cost efficient route. Various watersheds differ based on the character, their use; their physical situations as well as characteristics of the receiving stream the Missouri River. Arguably not a river that is used for recreation or whole body contact use. Mr. Woody requested that the Commission consider following the national CSO policy.

Mr. Champion added he would like to get rid of the 45/45 milligram per liter and adopt the federal policy that provides site specific flexibility.

Chairman Herrmann entertained a motion to go into closed session.

Commissioner Easley moved that the Clean Water Commission go into Closed Session to discuss legal, confidential, or privileged matters under Section 610.021 (1), RSMo; personnel actions under Section 610.021 (3), RSMo; personnel records or applications under Section 610.021 (13), RSMo or records under Section 610.021

(14), RSMo which are otherwise protected from disclosure by law. Commissioner Hauser seconded the motion and all Commissioners and Chairman Herrmann voted yes.

Chairman Herrmann made a motion to come out of closed session and go back into open session

Commissioner Perry moved for the Clean Water Commission to come out of Closed Session and go back into Open Session. Commissioner Hauser seconded the motion and all Commissioners and Chairman Herrmann voted yes.

Mr. Hull reported he wanted the opportunity to discuss the department's perspective when it comes to implementing CSO direction in the state. He stated the department is very understanding of the concern on this issue. He introduced Mr. Kevin Mohammadi, Chief of the Compliance and Enforcement Section, Department of Natural Resources to provide the discussion.

Mr. Kevin Mohammadi presented staff's positions in the capacity as Chief of the Water Pollution Control Branch and not as Chief of the Compliance and Enforcement Section. Ten to twelve years ago there were approximately 10 CSO communities. Chillicothe decided to separate their system, Cape Girardeau did the same; City of Jackson, City of Jefferson City and Sedalia all separated theirs. The City of Macon has submitted their long term control plan. Their long-term control plan has been reviewed and approved. Their plans provide capture and treatment of 100% of flow during 1 in 20 year rainfall event. Anything above that they would provide the department an alternative to meet the water quality standard. The Metropolitan St. Louis Sewer District has submitted their long term control plan that is in a phasing approach. There are five phases and they have implemented two phases and the third phase has been submitted to the department, reviewed and approved. The third phase also requires a separation. The City of Kansas City requested from the department two years ago to develop a work plan for developing a long term control plan. The sampling part of that plan has been approved and it has been conveyed to the city and the city will submit their long term control plan at the end of 2008. The department has an agreement with the City of St. Joseph. They are in the process of developing their long term control plan and gathering their data. The City of Moberly has done lots of work, but they have not formally submitted their long term control plan to the department. Staff has discussed with them a need to develop their long term control plan and staff will evaluate those control devices in their long term control plan.

Mr. Mohammadi went back to some of the points that the Urban Areas Coalition raised. One size should not fit all. The department agrees with that. Staff recognizes that in some situations meeting 45/45 may not be cost effective and feasible and the department would like to entertain other alternatives such as EPA's approach. With regard to the City of Moberly, discussing that they were fined for exceeding 45/45, that fine was for a fish kill and not for exceeding 45/45. On the EPA approach, EPA assumes that water

quality standards are going to remain the same. That is not necessarily the case. Water quality continues to be tightened. This state recommends doing a thorough review of the control devices to see what is feasible and cost effective, including separation.

The Urban Areas Coalition also raised the issue that through the permitting process the water quality standard can be achieved. The EPA approach does not allow the permitting approach. It has to be under consent judgement. The state is much more flexible with CSO communities than EPA. EPA requires two years of developing the long term control plan and 15 years of implementation. The department is willing to give the CSO communities more time in order to develop their long term control plan. An example is the City of Kansas City. The department is willing to provide much more time than 15 years for implementation of their long term control plan in order to help them finance the project.

Chairman Herrmann asked Mr. Hull to explain the status of where the department is in the rulemaking process with this regulation.

Mr. Hull replied that Chairman Herrmann is referring to the water quality standards rulemaking. The present status of that regulation is that it has not yet been proposed formally to the Secretary of States Office. House Bill 980, passed during the last legislative session, went into effect August 28, 2004 and was discussed internally within the department. The department's decision was to abide by the requirements of that new legislation and revise the regulatory impact report that had already been prepared under the department's policy to include the additional information required in House Bill 980. That bill also requires the Regulatory Impact Report to be advertised as being available on the department's website for a public comment period of 60 days. The Regulatory Impact Report has been revised to include the new requirements in House Bill 980. It should be available around the first of October, and then it will be out for public comment for 60 days. Staff intends to bring back the report along with the comments received and the department's response to the Clean Water Commission for approval to go ahead and file the proposed rule.

Chairman Herrmann asked if 7.015 and 7.031 were being proposed for change?

Mr. Schroeder reported that the two sections of the effluent regulation that contains language on the 45/45 limits during precipitation events are being opened for revisions right now but for other reasons.

Ms. Aimee Davenport, an attorney with the Water Protection Soil Conservation Division, Department of Natural Resources, stated the department would have to restart the process if they were to make a further revision in the effluent regulation section. This would probably have an impact on federal negotiations that are taking place on the federal level right now. EPA is still negotiating a settlement agreement or consent judgement to resolve the suit that the Coalition filed against them. There has not been a court ruling and they are still negotiating to settle that case out of court. There would be

a backstop date of possibly July 2005 for them to start the rules if the department has not finished the water quality standards.

Chairman Herrmann commented when the proposed regulation is published, and there is a public comment period, the staff and the Commission still has the authority to change and implement changes under a public comment period.

Chairman Herrmann asked if changes are made now, will the department have to start over?

Ms. Davenport replied she thought it would. Staff would have to go back and apply for the executive order and the regulatory impact report requirements. She made a recommendation that staff go back and write down a policy proposal with comments heard today, and bring that back to the next Commission meeting and leave the water quality standards rulemaking package on track and continue to make progress with that package so the department will not lose anymore time and so EPA will be able to continue negotiating their same backstop dates that they have been for the past year.

Mr. Scott Totten, Director of the Water Protection and Soil Conservation Division, Department of Natural Resources stated he would second that but also say that the regulatory impact report legislation was designed specifically to ensure that every part of the rulemaking process was open and available to the public. There are stakeholders that have a vested interest discussing this matter. Mr. Totten expressed he would caution the Commission against adding that provision either at this point in time, in this rule making, with no other stakeholder process involved, or as part of a comment through the rulemaking process because at that point in time, if that is included in the final rulemaking package it was not part of the original things that were being debated and being changed in the rule. While that portion of the rule is open we are talking specifically about certain water quality standards that EPA found deficient and the changes in those that we have been through several months on the stakeholder process.

Mr. Totten commented if it's required at this point in time, the department has to go back to square one in the rulemaking process, which sets them off the EPA schedule and their schedule that they are negotiating with the Coalition for the Environment for settlement of the federal lawsuit. Also, if the department includes it as part of the comment period to try to get it quickly, that will also skirt the intent of an open and public process.

Chairman Hermann stated this subject was not introduced nor discussed during the lawsuit. The lawsuit has eight specific points and this subject was not one of those eight points. He fails to see how it sets that procedure back.

Mr. Totten stated the department is suggesting, that is until they can get the regulation revised to incorporate what was considered this morning, is to direct staff, in their negotiations, to incorporate those things in any federal or any state settlement agreement that is done until such time as those regulations.

Commissioner Hauser stated since the Commission can't act today, he is making a motion that the issue is placed on the agenda for the next meeting, November 3rd, for consideration of potentially altering the effluent regulations 7.015 and also to consider CSO policy in general and including mimicking the federal policy on CSO's. There will be time between now and then for all discussions to take place and the Commission will legally be able to take action in November if they need to. Commissioner Perry seconded the motion. All Commissioners and Chairman Hermann voted yes.

Mr. Hull asked the if this action to discuss the CSO's and possibly taking action at the November meeting would delay going forward with the Regulatory Impact Report?

Chairman Hermann replied not in his mind.

Commissioner Hauser replied he doesn't see how it can as the Commission doesn't know what they are going to do in November.

Staff Updates

Permitting Update

Mr. Peter Goode, Chief of Permits and Engineering, Department of Natural Resources, updated the Commission on permitting activities. There is a reduction in the permitting backlog over that past months. There are roughly 12,000 active permits and a backlog of approximately 5%. The backlog is expected to drop more.

There are three general permits that are expired at this time. One is on public notice. When it comes off public notice, the department will be able to issue a number of permits that are backlogged. There will be stakeholder meetings held for the Sand and Gravel general permit to begin renewing it. They have been waiting on the Land Reclamation Program to issue their final rule on Sand and Gravel. It should be public noticed around the end of the year, which means by early next year they will issue that one which will reduce some backlog. The final permit that is expired is MO-R-401 Landfarms and it is not known when that one will be issued. Staff will start on this one when the Sand and Gravel permit is complete.

EPA Region 7 offered assistance in reducing the backlog. The department will be sending them some of their major industrial permits for them to work on. In FY04 the program issued over 3,500 permit actions. The program is doing more permits with less staff. Their primary goal is getting permits out on time.

Commissioner Perry asked if the applicant has to request for their fee to be returned if a permit is not acted upon within 180 days?

Mr. Goode replied the department is required to return the fee by law, the applicant does not have to request the money. The department does track the returning of the fees.

Mr. Goode will report at the November 3rd meeting an update on the permit fees.

Sunshine Law Update

Mr. Bryan updated the Commission on changes to the Sunshine Law. The law was updated to deal with new technology such as internet chat rooms. The law applies to all records regardless of what form they are kept in. If a Commission member sends an email to a quorum of the Commission from their home computer, they also need to send a copy of the email to Mr. Jim Hull. A copy will need to be retained for public record.

The Sunshine Law allows the Commission to close meetings and records but never mandates you do so with limited exceptions. If you object to closing a meeting to discuss something, you can avoid liability later on if there is a core finding that the discussion was improper and should have taken place in open session.

A public body must generally give at least a 24 hour public notice before the meeting. If the meeting will be closed the notice must state the specific provision of the law that allows it to be closed. The notice must include date, time, place, and a tentative agenda. The meeting has to be posted at the main office at least 24 hours in advance. If there is an emergency meeting, the minutes have to address good cause for not complying with the law. For electronic meetings, a notice has to be posted on the web site. Each public body must have a written Sunshine Law policy and a custodian of records who's name is available to the public on request.

There are new limitations on copy charges to the extent that there was to the existing policy. It needs to be upgraded and Mr. Bryan will work with staff on that. The public has a right to video or audio tape a meeting under the Sunshine Law. An area may be designated where that equipment can be set up. The Sunshine Law requires a custodian of records to respond to a record request as soon as possible but no later than three business days after the custodian receives it. The new law has increased penalties for violating the Sunshine Law. The law requires that you must keep minutes for open and closed meetings. The minutes must include the date, time, place, members present and absent, and a record of any votes that are taken. The law requires the Commission to grant access to open records that are in the custody of the Commission, but it does not require new records to be created in order to satisfy a request for information.

Standing Items

Budget and Legislative Discussion

Mr. Jim Hull reported that HB 980 has language in it that now requires the department to allow applicants to review their draft permit prior to their being placed on formal public notice.

HB 1433 has a requirement that all wastewater sample analysis will be performed by a lab that was certified by the Department of Natural Resources. Even though the bill had an effective date of August 28, 2004, the department does not have the ability to certify those labs right now. The labs will remain status quo until a certification program is set up.

The department is in the process of putting together the budget for FY 2006.

Public Comment and Correspondence

Mr. Roger Walker, representing International Paper, circulated a handout to the Commission on International Paper's Stormwater Permit. Mr. Walker encouraged the Commission to direct staff of the Water Protection Program to continue discussions with International Paper on its stormwater permit and settlement negotiations prior to issuing a revised stormwater permit for public comment. In the alternative, Mr. Walker requests that International Paper's outstanding variance request be set for hearing.

Future Meetings

The next meeting of the Clean Water Commission is scheduled for November 3, 2004 at the University Plaza Hotel and Convention Center in Springfield, Missouri. Mr. Jim Hull reported that for 2005 the Clean Water Commission meetings will be scheduled beginning Wednesday January 5, and every other month after that on the first Wednesday of each month.

Legal

Pebble Creek

Chairman Herrmann reported the Commission will begin its hearing on the recommended order dated August 3, 2004, in the matter styled in re: Permit approval for a wastewater treatment facility to the Pebble Creek Homes Association, Inc., number 386-04.

The purpose of the hearing was to provide the parties the opportunity to comment on the Hearing Officer's recommended order denying the appellants' motion for stay. The members of the Commission were provided with copies of the recommended order.

A court reporter was present to transcribe the hearing. A transcript of this hearing will be available for review at the office of the Missouri Clean Water Commission, Jefferson State Office Building, 205 Jefferson Street, Jefferson City, Missouri.

Chairman Herrmann entertained a motion to accept the Hearing Officer's recommendation.

Commissioner Hauser made a motion to accept the Hearing Officer's recommendation. Commissioner Easley seconded the motion. All Commissioners and Chairman Herrmann voted yes.

Respectfully submitted,

Jim Hull
Director of Staff